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The Solicitors' Journal

VOL. LXXIX. **Saturday, February 23, 1935.** No. 8

Current Topics : King's Bench Business : Royal Commission — County Courts Act, 1934—Judicial Strictures on Legislative Expression —The Gold Clause—The Housing Bill in Committee—Slum Clearance Compensation — Checking Ribbon Development — Property Damaged by Mining Subsidence—Post Office Bill — Unemployment Assistance : Appointed Day—New Poor Law Order—Recent Decisions 133

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Current Topics.

King's Bench Business: Royal Commission.

THE Royal Commission appointed to consider the state of business in the King's Bench Division of the High Court of Justice began hearing evidence last Monday. Readers may, perhaps, be reminded that the terms of reference were: "To enquire into the state of business in the King's Bench Division of the High Court of Justice and to report whether, with a view to greater dispatch, any reforms should be adopted, and in particular what is the judicial strength required to deal with the business, whether there should be any further fusion or further sub-division of the Divisions of the Supreme Court, whether any alterations should be made in the circuits of the judges, whether any further measure should be taken for the devolution of work from the High Court to the County Court, and whether a retiring age should be imposed upon those appointed in the future to the Bench of the Supreme Court." Master VALENTINE BALL, who was the first witness, submitted a memorandum upon the question whether trial of actions at *nisi prius* could be expedited by any and what change or changes in existing procedure. The witness emphasised the importance of deciding by some means or other that a case was fit and proper to be tried by a judge of the King's Bench Division before being set down for trial, and intimated that the giving of directions by the judge who would try the action was an unattainable ideal. In the process of elimination of unsuitable cases interlocutory proceedings before the Master should always be allowed to play their part. Master BALL did not assent to the allegation that time was wasted and the administration of justice impeded by unnecessary interlocutory proceedings, and stated that for every hundred cases which were begun by writ of summons only one came to trial in open court. It was suggested in reference to the powers of the Master before and after the coming into operation of the New Procedure Rules that the trial of actions at *nisi prius* would be expedited by reversion to the older practice. King's Bench judges had never been given a fair opportunity of giving undivided attention to the London cause lists. Had there always been two judges (or even one) available for non-jury, and one judge for jury actions—special or common—the witness did not believe that there would now be any substantial arrears. Intimating that he saw no reason why the fixing of dates for trials with comparative certainty should not be applied to all non-jury actions, Master BALL suggested that another should be added to the existing lists—a non-jury (fixed cause) list, but he added that it was a condition precedent to the establishment of such a list that there should be one or more judges sitting continuously to deal with it. The foregoing is to be regarded as a summary of the principal points touched upon, anything like a complete treatment of the subject being clearly out of place here.

County Courts Act, 1934.

THE position with regard to the coming into force of the County Courts (Amendment) Act, 1934, and the County Courts Act, 1934, which must have been a source of difficulty to many practitioners, was clarified by the announcement recently made by the Lord Chancellor and set out in our last issue on p. 131. The parts of the latter Act, brought into operation on 1st January, 1935, by Order in Council, have been noted in this journal (78 SOL. J. 619 and 79 SOL. J. 14). With regard to the rest of that Act, it is indicated that the Lord Chancellor, as at present advised, does not propose that any further provisions of the Act shall come into operation before the Act as a whole is superseded and replaced by the County Courts Act, 1934. Section 193, sub-s. (3) provides that the last-named Act "shall come into operation on the first day on which, by virtue of orders made by His Majesty in Council under sub-section (4) of section 35 of the County Courts (Amendment) Act, 1934, all the provisions of that Act will be in operation." Sub-section (4) of the same section provides (by reference to the Fifth Schedule) that the whole of the County Courts (Amendment) Act, 1934, shall be repealed. Before the consolidating Act can be brought into force a complete new set of Rules will be required and these will operate from the day upon which, by Order in Council, made under s. 35, sub-s. (4), of the Amendment Act, all the outstanding provisions of that Act will be brought into operation. The effect of this Order in Council, as reference to s. 193, sub-ss. (3) and (4), *supra*, shows, will be to bring the consolidating Act into operation and to repeal the amending Act. How long the preparation of a set of new county court rules will take it is, of course, impossible for us to say, but it may be noted that the scope of the rule-making authority has been widened by s. 99, sub-s. (3) of the consolidating Act. That sub-section, without prejudice of the generality of the foregoing provisions of the same section, enacts that the power of making such rules shall extend to prescribing the court in which proceedings shall begin, the procedure to be adopted where proceedings are commenced in the wrong court and the circumstances justifying transfer. The sub-section also extends to regulating and providing for matters covered by county court rules in force on 17th May, 1934, or for any other matter regulated and provided for, before the amending Act came into operation, by certain enactments set out in the Third Schedule. These consist of certain sections of the County Courts Admiralty Jurisdiction Act, 1868, of the County Courts Acts of 1888, 1919 and 1924, and s. 113, sub-s. (3) of the Settled Land Act, 1925.

Judicial Strictures on Legislative Expression.

LORD TOMLIN'S observation in the course of his judgment in *Charrington & Co.* v. *Simpson* last week that it was unfortunate that s. 4 of the Landlord and Tenant Act, 1927, had not been framed with a clearer exposition of its general purpose and with more precision in the use of terms, echoes a familiar criticism heard with great frequency in the courts when some statutory provision comes up for interpretation. While all realise the difficulty inherent in the endeavour to express in clear and unmistakable language what is intended, it is regrettable that in a statute which is assumed to embody the collective wisdom of Parliament and which, in this instance, introduced so many novel provisions affecting the relations of landlord and tenant, there should be this failure to make its scope and intention clear beyond a peradventure. Both Houses of Parliament should memorise and keep ever before them those wise words of Mr. Justice STEPHEN: "It is not enough to attain to a degree of precision which a person reading in good faith can understand; it is necessary to attain, if possible, to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand." We are still a long way off attaining this degree of perfection in the wording of our statutes, and although, as Lord MACMILLAN humorously remarked in a lecture delivered by him some years ago, there is the consoling reflection that imperfectly framed statutes will at any rate save many lawyers from swelling the ranks of the unemployed, this may not appeal to the ordinary litigant at whose expense the interpretation of these legislative conundrums has to be undertaken. Indeed, the litigant may feel great sympathy with the sarcastic comment of a former American judge that "no man's life, liberty or property are safe while the Legislature is in session"!

The Gold Clause.

THE decisions of the United States Supreme Court, on 18th February, in the "gold clause" cases, invite comparison with the recent House of Lords decision in *Feist* v. *Société Intercommunale Belge D'Electricité* [1934] A.C. 161; 78 SOL. J. 64 (see also 78 SOL. J. 41). In the latter case the clause promised payment in gold of a standard weight and fineness, and the bond in which it figured was issued by a private company. At the date of the creation of the bond the gold standard had been restored in a modified form, and as Lord RUSSELL stated in his judgment, the gold clause was probably inserted in contemplation of the contingency of the country again going off gold, as it actually did in 1931. The House of Lords upheld the gold clause. In the American case, a vital constitutional issue was raised, for Congress had purported to nullify the effect of the gold clause in a resolution of 5th June, 1933, decreeing that "every obligation, heretofore or hereafter incurred, whether or not it calls for payment in gold or a particular kind of coin or currency, shall be discharged upon payment of any coin or currency which at the time is legal tender for public or private debts." It was argued that this resolution was contrary to the Fifth Amendment to the Constitution, which provides that no one "shall be deprived of life, liberty or property without due process of law." Two of the cases before the court involved gold bonds issued by railway companies, one involved United States Liberty Bonds, and one a gold certificate of currency. The court upheld the right of Congress to abrogate gold clauses in private contracts, but in the case involving United States Liberty Bonds, it held that although Congress had acted beyond its powers, the United States Court of Claims had no power to entertain claims arising out of a refusal of the Government to honour the gold clause, as recovery was limited to the actual damage suffered, and no damage had been suffered, in view of the universal availability and use throughout the country of legal tender currency in meeting all obligations. Had the result been otherwise, the Treasury debt would have been increased by 20,000,000,000 dollars, while private debts would have been increased by nearly 40,000,000,000 dollars. The decisions were welcomed for political reasons, but one cannot help feeling some sympathy with the minority judgments of the four judges who spoke of "shame and humiliation" and "the wiping away of constitutional guarantees."

The Housing Bill in Committee.

CLAUSES 1 and 2 of the Housing Bill have now passed through the Committee stage. Among the amendments proposed to cl. 1, which imposes a duty upon local authorities to inspect and make reports and proposals relative to overcrowding, was that the reports should be submitted within six months of the passing of the Bill. The Minister of Health intimated that he would accept the amendment if he thought it would secure the swift and more effective working of the Bill. A limit of six months was too long for small areas, and to deprive the Minister of the power of fixing a maximum period would take a powerful weapon out of his hands. At a later sitting of the Committee the Minister emphasised the necessity of a proper measure of elasticity in fixing different minimum dates for each stage of the procedure, with a view to the maximum rate of progress being secured. Clause 2 of the Bill defines overcrowding, but not in such a way as to preclude an occupant or occupants of a house normally having to sleep in a living room. An amendment to the effect that such a practice should be brought within the definition was defeated. The Minister of Health said that they had to consider what was the best standard that could be imposed on the country as a whole without a risk of the Bill breaking down as the result of specifying a standard which would be beyond attainment, and declined to risk failure by trying to jump too far. It was shown that the standard in the Bill had been arrived at after consultation with local authorities and their officers throughout the country.

Slum Clearance Compensation.

IN the course of a recent letter addressed to the Minister of Health, Mr. HERBERT MORRISON, Secretary of the London Labour Party, expressed the opinion that the inevitable consequence of the proposals in the Housing Bill would be to increase the compensation payable by local authorities and to slow down procedure in connection with the urgent problem of the slums. It was intimated, moreover, that the effectiveness and magnitude of slum clearance operations might, in some areas, be seriously impaired by a consequentially increased burden being placed upon the local authorities concerned. In the course of his reply, Sir HILTON YOUNG observed, in effect, that the fairness of the new proposals relating to compensation was not criticised but fear was expressed that the effect of the proposals would be a slowing down of slum clearance. "To this criticism," the Minister wrote, "there can clearly be only one reply. The new proposals have been shown by experience to be necessary to make compensation equitable, and an equitable basis for compensation is the first necessity for rapid and effective progress with the work of slum clearance." In the course of his letter Sir HILTON said that he welcomed the expressions in Mr. MORRISON'S letter in favour of a speedy and determined assault upon the slums.

Checking Ribbon Development.

FOLLOWING up our frequent allusions to this subject of ribbon development and to the efforts which are being made to counteract the evil, we quote from *The Times* the following resolution, which has been adopted by the Oxfordshire County Council as of more than local interest. The Council resolved: "That unless existing developments preclude the possibility of the future construction of service roads adjacent to, but separate from, the central carriage-way, no building shall be erected at a distance of less than ninety feet from the centre

line of any classified road, or road of potential classification value, or from the prescribed future centre line of such road, so as to allow for the future construction, if thought desirable, of service roads on each side of, but separate from, the central carriage-way." There are in Oxfordshire about 500 miles of classified road and 1,100 miles of unclassified road, any portion of which, Lord MACCLESFIELD said, in moving the report of the Highways Committee, was open to attack by ribbon development. The northern by-pass presents a different problem because, as Lord MACCLESFIELD pointed out, if development were permitted along that road, it would cease to be a by-pass and become another built-up area. With regard to this road the Council resolved in effect that the Oxford Regional and Special Areas Town Planning Committee and the Witney and District Joint Town Planning Committee be invited to co-operate with the Council by agreeing to include in their prospective town-planning schemes a clause providing for the reservation as a public open space of a strip of land 100 feet wide on either side of the by-pass and limiting access to the road from adjoining lands to certain specified points. By another resolution the County Council accepts financial responsibility following upon the adoption of such a clause by the town planning authorities.

Property Damaged by Mining Subsidence

IN a recent Current Topic "Proposal for Revision of Mining Law," which appeared recently (79 SOL. J. 74), we stated that Lord CHESHAM, President of the National Federation of Property Owners and Ratepayers, alluded to the question of increasing damage to public and private property by mining subsidence. We are indebted to the mover of the resolution for the information that such allusion was not in fact made, except to call upon him to propose the resolution on the agenda. That resolution, which was supported unanimously, urged the Government to introduce legislation giving right of surface support and compensation for damage, and in case of dispute easier and cheaper facilities for legal proceedings. Our correspondent joins issue with our deprecation of governmental intervention in matters of private contract and the restoration of a common law or other right of support voluntarily surrendered. Our correspondent, moving the resolution, indicated an extreme reluctance to interfere with existing contracts, but postulated the existence of two willing people for a contract. He pointed out that land was only obtainable at the dictum of the man who owned it, and, he added, "if they wanted that land they must take it on his (the owner's) conditions even if he laid down that no compensation would be paid." This is, of course, perfectly true, but that such a contract is voluntarily entered into can hardly be denied. The purchaser takes such property at his own risk with his eyes open. How far a right to let down the surface is necessary for the economic extraction of coal is not a question which can be discussed here (see, *inter alia*, *Welldon* v. *Butterley* [1920] 1 Ch. 130; *Warwickshire Coal Co.* v. *Coventry Corporation* [1934] 1 Ch. 488); but there seems to us to be no more justification for depriving a colliery company of the legal rights it may have acquired than for taking away, without proper compensation, any other form of property.

Post Office Bill.

THE text of the Post Office (Amendment) Bill which was recently issued with an explanatory and financial memorandum does not for the most part contain matter of particular interest to practitioners. Attention may, however, be drawn to cl. 11, which makes it clear that proceedings may be taken in the county court for sums due to the Post Office, as well as, according to the existing law, in a court of summary jurisdiction. The Bill is to effect certain changes in the provisions of the Post Office Act, 1908, which need not detain us.

Unemployment Assistance: Appointed Day.

IT was stated in a recent issue that the Unemployment Assistance Board would, on 1st March, become responsible for the able-bodied unemployed who are a charge on the local rates. Readers may be reminded that cl. 2 of the Unemployment Assistance (Temporary Provisions) Bill, which at the time of writing has passed through all the stages in the House of Commons, postpones the appointed day to a date not yet determined.

New Poor Law Order.

READERS may be reminded that the Poor Law Act, 1934 (Date of Operation) Order, 1935, comes into operation on 1st March. The new Order, which was set out in our issue of 9th February (79 SOL. J. 111), is made under the Poor Law Act, 1934, s. 2, sub-s. (4), which provides that the Act, so far as it relates to wounds or disability pensions and to the Transitional Payments (Determination of Need) Act, 1932, shall come into operation on such day as the Minister of Health may by order appoint. The Poor Law Act, 1934, is a short statute amending s. 48 of the Poor Law Act, 1930.

Recent Decisions.

AN error crept into our statement in this column (79 SOL. J. 115), regarding *Elderton* v. *United Kingdom Totalisator Co. Ltd.*, where the defendant company did not contend that the "goals points" pool was not within s. 26 of the Betting and Lotteries Act, 1934, and gave an undertaking to discontinue that kind of pool in future. The phrase in our topic "and also . . . selected matches" should therefore be excised. The real position is duly set out in our report on p. 126 of the same issue.

Decisions which may now be noted include that of the Court of Appeal in *Re Lovegrove; ex parte Applestone and Another* v. *The Trustees* (reported at p. 145 of this issue), where it was held that a sales agreement made between the company and one who had become bankrupt, did not involve an assurance of chattels within s. 4 of the Bills of Sale Act, 1878. Nor was the transaction void against the trustees in bankruptcy under s. 43 of the Bankruptcy Act, 1914. The agreement provided that the orders obtained by the bankrupt from his customers should be executed by means of a sale to the company and a re-sale by the company to the customers. It was not disputed that the transaction was an honest one carried out between business men of integrity.

The decision in *Elliot* v. *Joicey and Others* (p. 144 of this issue) depended upon whether one who had died and to whom a posthumous child was born could be said to have left "any issue him surviving." The House of Lords, reversing a decision of the Court of Appeal and CLAUSON, J., decided in the negative. There was no authority covering the exact point but Lord RUSSELL OF KILLOWEN observed that the word "surviving," which, in the learned lord's view, according to its ordinary meaning required that the person who was to survive should be living both at and after a particular point of time, ought to be governed by the same considerations as those which had been applied to the word "living," where the event postulated had been that there should be a child living at a particular point of time, e.g., at its father's death.

In *Charrington & Co. Ltd.* v. *Simpson* (p. 144 of this issue) the House of Lords reversed a decision of the Court of Appeal and restored a judgment of the Deputy County Court Judge (which had been affirmed by a Divisional Court) in a matter arising under the Landlord and Tenant Act 1927. The referee under that Act had found that the tenant had attached a valuable goodwill to the premises which would enable the landlords to secure a higher rent for them, and that by his attention, skill, etc., had attached to the premises a greater amount of goodwill than an average or normal tenant could be expected to have done. The Deputy Judge allowed the landlords' application to vary the report and dismissed the tenant's claim for the grant of a new lease.

Local Authorities and Highways.

In view of the decision of Mr. Justice Branson on the 22nd January in *Nicholson* v. *Southern Railway Company and the Sutton and Cheam Urban District Council* (79 Sol. J. 55), highway authorities throughout the country will be well advised to satisfy themselves that in making up, altering or repairing their roads they have not unwittingly, either by omission or commission, created a state of affairs in relation to adjoining land which is in the nature of a trap to unsuspecting pedestrians. In the above case the local authority, to put the matter as briefly as possible, in making up a road had raised the level of a portion of it about six inches above that of land abutting on it. The land—or the road—was unfenced, and no signs or lights were exhibited to warn pedestrians of the drop between the road and the land. On the night of the 16th December, 1933, the plaintiff, whilst walking along the road, fell over the drop and broke her right leg. In her action for damages for personal injuries against both the local authority and the Southern Railway Company as occupiers of the adjoining land, each defendant denied liability and alleged that the other was responsible for the accident. The local authority also pleaded that the plaintiff was guilty of contributory negligence, but that was emphatically negatived by Mr. Justice Branson, who, after pointing out that the plaintiff was walking on the highway where she was entitled to be, said that in making up the highway in the manner they had at that point the local authority had converted what had previously been a safe piece of road into one which was dangerous and had made what appeared to him to be a trap for pedestrians using that side of the road.

The real and novel point of interest in the case was the position of the occupier of the adjoining land, who, the urban district council contended, were in some degree responsible, because they had permitted their land adjoining the highway to be and remain in a condition which caused it to be a nuisance. The fallacy of such an argument is, we think, obvious, but before commenting on it the position of adjoining occupiers may be summarised in a few words. There is a common law obligation upon them to prevent their land, by whatever necessary means, from ever becoming a nuisance to the highway or to those using the highway. The case of *Barnes* v. *Ward* (1850), 9 C.B. 392, illustrates excellently that duty, and is for all practical purposes the reverse of the present case. In *Barnes Case* the owner of land abutting on a public footway in the course of building a house excavated an area and left it unfenced. A pedestrian fell into the excavation at night and was killed. Holding the owner of the land liable in damages, Maule, J., said: "It appears to us after much consideration, that the defendant, in having made that excavation, was guilty of a public nuisance, even though the danger consisted in the risk of accidentally deviating from the road; for, the danger thus created may reasonably deter prudent persons from using the way, and thus the full enjoyment of it by the public is, in effect, as much impeded as in the case of an ordinary nuisance to a highway."

Turning to the present case, the obvious outstanding fact is that the occupier of the adjoining land—the Southern Railway Company—had done absolutely nothing on their land to make the use of the highway dangerous. The danger—however small it might be—resulted entirely from the act of the local authority on the highway itself, in making it six inches higher than the adjoining land. To say that in such circumstances there was thrown upon the occupier of the land an obligation to make the highway safe for users of it by fencing his land or building it up so as to do away with the drop which resulted from the work of the local authority was, in the words of Mr. Justice Branson, to put "a new and intolerable burden upon the occupiers of land adjoining highways." There is certainly no authority for such a novel and unjustifiable proposition, such observations as there are, indeed, tend rather in the opposite direction. For example, in *Cooper* v. *Walker*, 2 Best & Smith, Blackburn, J., said at p. 780: "The owner of the bank of a canal or sewer may, without considering the effect of what he is doing, permit passengers to pass along until the public have acquired a right of way there. It is often hard upon him that the public right should have thus been acquired; it would be doubly so if the consequences were that he was bound to fill up or fence off his canal." Referring to the foregoing observation, Mr. Justice Branson said that he was conscious that it was not dealing with the precise point with which he had to deal, but he thought that it was *a fortiori* a hardship if, as was suggested in the present case, the authorities concerned with the maintenance of the highway could, by altering the highway in such a way as to constitute it dangerous, throw upon the owner of adjoining land an obligation to make it safe. No blame, of course, can be attached to anyone personally in the present case, a slightly raised highway over a short distance may well be a matter which would escape notice, or, rather, its potential danger might not be appreciated, but it is easy to see that the decision in the present case is justified if one imagines a highway raised, say, eighteen inches at a certain point. Surely every highway authority in such a case would unquestioningly fence it themselves without for a moment thinking of calling on the owner of the adjoining land to do so. In the result Mr. Justice Branson awarded the plaintiff £500 damages against the local authority and gave judgment for the Southern Railway Company.

The Measure of Damages in Collisions of Ships.

Two vessels, the "Benguela," owned by Elder, Dempster and Co., Limited, and the "London Corporation," owned by Furness, Withy & Co. Limited, were laid up in the Blackwater River, Essex. They ranged at their moorings, owing, it was agreed, to the fault of both vessels, and the "Benguela" was damaged to the agreed extent of £250. Before the damage claim of Elder, Dempster & Co. Limited came up for assessment by the Admiralty Registrar, the "Benguela" was sold by her owners to Italians for breaking up for £4,200. The purchasers contracted not to trade with the vessel. The registrar reported that the plaintiffs were entitled nevertheless to recover the estimated cost of repairs to the "Benguela" as damages (*The "London Corporation,"* 51 T.L.R. 70; 79 Sol. J. 86).

The question was whether the owners of the "Benguela" had suffered any loss and were entitled to any damages. For there was no evidence of any actual loss apart from the cost of repairs, and no evidence either that the purchase price was reduced because the ship had been damaged or that the sale for breaking up was the result of the damage. There was, however, the actual physical damage done to the ship, and the agreed cost of repairing her. That damage was undoubtedly suffered, and the owners of the vessel succeeded in their claim for the agreed amount, the court holding, in effect, that the liability to pay compensation for wrong-doing attached to the defendants as soon as the damage was done, and that it was irrelevant to consider what the plaintiffs did with their ship after the collision.

The decision is in entire consonance with a long line of authorities, and is really an application of the maxim "*ubi jus, ibi remedium*" (*Ashby* v. *White*, 2 Ld. Raym. 955). He, whose ship is run into by another's vessel in circumstances of negligence, has suffered an infringement of an absolute right and is therefore entitled to such damage as the law presumes will flow in the ordinary course of things from the mere invasion of his rights. This is "general damage." He may also recover any further particular damage which may result from the special circumstances of the case. This is "special damage." This distinction was drawn by Bowen, L.J., in *Ratcliffe* v.

Evans [1892] 2 Q.B. 524, a case in which the damage, and not the infringement of the positive right, was the wrong. If there is in fact such an infringement—

> " What right has a wrongdoer to consider what use you are going to make of your vessel ? " (per Lord Halsbury L.C., in *The " Mediana "* [1900] A.C. 113, at p. 117).

Some damages are payable. And if in fact the ship was used for earning freight, then her owners may recover as special damages the amount of freight she would have earned if she had not been laid up for repairs, together with the working expenses incurred while the vessel is useless (*Admiralty Commissioners* v. *s.s. Valeria* [1922] A.C. 242). Similarly, even though the ship be a non-freight earning vessel, like a dredger or a lightship, the loss of her use may be measured and will sound in damages (*The " Greta Holme "* [1897] A.C. 596). The principle is clearly just as applicable to the motor-car of a commercial traveller or the instrument of a street musician. The damage usually flowing in such cases from the loss of use is the cost of hiring a substitute. If the ship or car be used for pleasure purposes only, the owner can still recover damages for the loss of the use of the chattel during the repairs. Further authorities in which damages were given to the owner of non-profit-earning vessels are *The " Chekiang "* [1926] A.C. 637, and *The " Susquehanna "* [1926] A.C. 655, both cases where the King's ships were temporarily disabled.

Provided that the ship is still serving her owners as an effective ship, they may recover a sum in respect of the permanent repairs which will have eventually to be done in order to restore the ship to the same condition as before the collision, and a sum for the prospective loss of time during the execution of those repairs, even though at the time of the reference to assess compensation only temporary repairs have been carried out : *The " Kingsway "* [1918] P. 344.

On the other hand, the wrongdoer may show that the shipowners could not have used their ship because of circumstances quite unconnected with the accident, such as a restrictive quota, where the ship after repair made the one voyage which she could make within the limits of the quota (*The " Strathfillan "* v. *The " Ilkala "* [1929] A.C. 196), or a contract made by the owners which prevented them in any case from trading with the ship during the period necessary to repair the damage caused by the collision : *The " York "* [1929] P. 178.

It is also open to the defendants to show that the damages are largely due to extraneous causes. An example of this is afforded by *The " Liesbosch " Dredger* v. *The " Edison "* [1933] A.C. 449, where a dredger was sunk in collision, and her owners, owing to financial embarrassment and not to lack of dredgers on the market, were obliged to hire another dredger at a high rate. Lord Wright delivered the opinion of the House of Lords in a most interesting speech, and refused to allow such damage as was due to this want of funds. He reviews the law as already laid down, pointing out that the rule in *In re Polenis & Furness, Withy & Co., Ltd.* [1921] 3 K.B. 560, " was concerned with the immediate physical consequences of the negligent act and not with the co-operation of an extraneous matter such as the plaintiffs' want of means " ([1933] A.C., at p. 461). He later laid down the true rule as being that " the measure of damages in such cases is the value of the ship to her owner as a going concern at the time and place of the loss," regard being had to " her pending engagements either profitable or the reverse " (at p. 464). Scrutton, L.J., in the Court of Appeal ([1932] P. 52, 67) had referred to the " value as a going concern." Lord Wright expressed doubts ([1933] A.C., at pp. 466-468) as to whether he had intended to include in this phrase any allowance for the disturbance of the contract. In *The " Arpad "* [1934] P. 189, Scrutton, L.J., in a typical example of his forceful dissenting judgments, one of the last he delivered, says that he certainly did intend to include in the value of the dredger as a going concern her position on a profitable contract, following the judgment of Lord Gorell in *The " Harmonides "* [1903] P. 1.

It has been sought to show by this review of the cases first, what is the true measure of damages in such circumstances, and secondly, that the decision in *The " London Corporation," supra*, is in entire accordance with the authorities. Final confirmation, if any be needed, comes from Lord Wright's speech above referred to ([1933] A.C., at p. 464), where he says : " But different considerations apply to the simple case of a ship sunk by collision when free of all engagements, . . . being laid up in port . . . In such a case the fair measure of damage will be simply the market value, on which will be calculated interest at and from the date of loss, to compensate for delay in paying for the loss."

It must follow that in the case of damage and not total loss, the measure of damage will be the cost of repairs. In neither case can the right to damages be lost by the fate which the owners may have ultimately contemplated for their ship or which she may ultimately meet.

Allocutus.

(A Point of Criminal Law.)

An interesting point reappears on a larceny case heard recently at the London Sessions, and moreover, a point on which no reported case seems to have turned since the middle of last century.

The relevant facts are few. When the jury returned their verdict of guilty, the prisoner collapsed and remained (apparently) unconscious until the end of the proceedings. Perhaps on this account, perhaps on a theory that the law does not now involve such a step, the presiding judge did not put the question : " Have you anything to say why the court should not proceed to judgment against you." Now in such textbooks as " Halsbury's Laws of England," 2nd ed., vol. 9, p. 179, and " Archbold's Criminal Pleading and Practice," 29th ed., p. 222, this " Allocutus " is referred to as a stage in a proper trial and a matter which " ought to appear on the record when made up." And an appropriate form is provided in " Chitty," vol. 4, p. 364. Failure so to address the prisoner invalidates the whole trial. " It is now indispensably necessary even in clergyable felonies, that the defendant should be asked by the clerk if he has anything to say why judgment of death should not be pronounced on him . . . and it is material that this appear upon the record to have been done and its omission after judgment in high treason will be a sufficient ground for the reversal of the attainder." The qualifications contained in this enunciation of principle can be more profitably considered below.

The object of the allocutus is to give the accused an opportunity for moving in arrest of judgment or of pleading the King's pardon or (pre-Victoria) of pleading benefit of clergy. It was at this stage of the trial that the clerk used to say " kneel down and pray your clergy "—a practice which was not entirely abolished for commoners till 7 & 8 Geo. 4, c. 28, or for peers until 4 & 5 Vict., c. 22.

For all these reasons it must be obvious that the allocutus was far other than a mere technical part of the proceeding. In *Rex and Regina* v. *Geary*, 2 Salk. 630, and the *Anon Case*, in 3 Mod. 265, the attainders were reversed on the grounds that the prisoner had not been given this chance of pleading. In the case of *O'Brien* v. *Rex*, 2 H.L.C. 465, the allocutus is so important that it is contended, though unsuccessfully, that the trial can be set aside on the grounds that the address was bad in point of form. The record in that case read : " Upon which it is demanded of him . . . whether he now hath anything to say for himself wherefore the said justices and commissioners ought not . . . to proceed to judgment against him . . . " and against that it was pleaded " that it

does not appear by the record aforesaid that it was demanded of him the said William Smith O'Brien in manner in like cases used and accustomed and by law required what he had to say why execution should not be awarded against him."

There the argument was not whether an allocutus was essential to valid proceedings, but whether the words " and execution " were essential to the address.

Another challenge as to form was made in *O'Neill* v. *The Queen*, 6 Cox. 495, on the grounds that the words " against him " following the phrase " why the court here should not proceed to judgment and execution " had been omitted. Held, that the reference to the accused was elsewhere sufficient.

To a certain extent, of course, the circumstances necessitating this proceeding have gone—no one now hangs for theft—objections to pleading can be more easily made at other stages of the trial—there is a poor persons committee for the financially unfortunate—but that is not to say that the allocutus itself goes. Although it is arguable that the decision in such cases as *Geary's* was based on the fact that the charge was a capital one, it is not so stated, and it is not, in our opinion, competent for any judge to assume so. After all, a pardon was framed to save the estate as well as the spinal cord of the recipient, and therefore, it is not enough to say that proceedings which are no longer capital, are no longer subject to this requirement.

Moreover, Halsbury and Archbold deal with the position with the categoric statement that in charges of treason and felony the prisoner is entitled to be heard. This does not confine the matter to capital offences, as Chitty suggests by his reference to " judgments of death." Nor would it ever have operated so to limit the accused's rights, because petty larceny, though always a felony, was not punishable with death. In fact Chitty virtually abandons his theory that the address is reserved for capital charges, in his form relating to cases of theft: " You stand convicted of stealing goods to the value of 10d. What can you say for yourself why the court should not proceed to award judgment as in of petit larceny." But if the basis for the address is not the capital nature of the charge, there is no justification for its abandonment in modern trials. Yet it is unusual for a summary trial of a larceny case to include this feature. Summary jurisdiction may, however, stand on a different footing, being subject to its own limited powers of imposing fine or imprisonment. It is not perhaps so necessary to pray in aid the King's pardon to save an estate which cannot anyhow be mulcted beyond £100. Be this as it may, the point is too grave to be decided by the practice of the inferior courts. Apart from the matters which the prisoner may be able to urge in bar, he requires the occasion to address " the court in mitigation of his conduct and desires their intercession with the King or casts himself upon their mercy " (" Chitty," 2nd ed., " Criminal Law," p. 700).

Why a once well-established right should now be generally ignored by magistrates and sometimes overriden by judges, is not clear. The fact that it is difficult to discover the historical origin of such a feature of the criminal law may confuse the historian; but no changes of the social or constitutional position *ipso facto* change the law. And to the lawyer, the statement of the position in " Comyns Digest," Tit. Judgment (N) is general: " So judgment ought not to be without a demand *si quid dicere habeat quare judicium non.*" If refinements are sought to be placed upon such a proposition, they should receive both legal and public attention.

SHORTHAND NOTES IN THE COURTS.

Mr. Justice Horridge urged the parties in an action before him recently (says *The Times*) to have a shorthand note taken, which could be treated as his own notes if the matter went to the Court of Appeal. It would, he said, save the time that would be necessary if he had to take a full note of all the evidence himself. The parties agreed to the suggestion.

Company Law and Practice.

Capital Appreciation and its Application as Profit.

That dividends cannot be paid out of capital is a principle of company law of such ubiquity that it can well be termed axiomatic. But, like all general principles, it is not to be applied without careful consideration of the exact meaning of each of its terms; and whilst I have no intention of embarking upon a discussion of the topic as a whole (I have dealt comparatively recently with the sources of dividends), there is one point connected with it which is, I think, deserving of more detailed treatment. I was going to say that it forms an exception from the principle as so stated, but it is more accurate to say that it is a case where capital in a loose sense of the word is not " capital " for the purposes of the rule. " When it is said, and said truly, that dividends are not to be paid out of capital, the word ' capital ' means the money subscribed pursuant to the memorandum of association, or what is represented by that money. Accretions to that capital may be realised and turned into money, which may be divided amongst the shareholders " (per Lindley, L.J., in *Verner* v. *General and Commercial Investment Trust* [1894] 2 Ch. 239, at p. 265); and it is with these accretions to capital that I am proposing to deal.

The leading authority for the proposition that appreciation of capital assets can be divided as profit is the case of *Lubbock* v. *British Bank of South America* [1892] 2 Ch. 198. There the bank's paid-up capital was £500,000; part of the undertaking was sold for £875,000, and after deducting the paid-up capital and other incidental expenses there remained a net balance of £205,000, which the directors proposed to treat as profit. It was held that the balance was profit on capital and not part of the capital itself and that the directors would be justified in carrying this sum to the profit and loss account, and after appropriating to the reserve fund so much as they thought proper, they might distribute the remainder as dividends. In the course of his judgment, Chitty, J., gave this illustration: " A man's business is to make boots and shoes. He has £10,000, which he takes into that business as his capital. He makes boots and shoes and spends the whole of his £10,000 in doing it, and he sells and gets back from his customers a certain sum on the sale. He compares then, assuming he has sold all, what he has got back with his expenditure in producing the boots and shoes and putting them on the market, and if he finds he has his £10,000 (I am treating it apart from any question of debts outstanding, supposing it is a good solid sale), then his capital is intact, and the rest, if there is a rest remaining in his hands, is profit. On the other hand, if he has only £9,000, his capital is not intact, and he has lost. It is exactly the same principle that has to be applied to a trading company under the Companies Act, and the capital that has to be regarded for the purpose of the Act of Parliament is the capital according to the Act and not the things, whether houses, goods, boots and shoes, or hats, or whatever it may be for the time being representing the capital, in the sense of being things in which the capital has been laid out."

The decision in *Lubbock's Case* was followed in *Cross* v. *Imperial Continental Gas Association* [1923] 2 Ch. 553, where the company was one to which the Companies Clauses Consolidation Acts applied; there the compensation payable to the association for the compulsory acquisition of its gas undertakings during the war had resulted in the realisation of a very considerable profit upon the book value of those undertakings. This profit was held to be distributable as dividend.

The rule established in *Lubbock's Case* is a simple one, but there are certain qualifications which are of great importance when it comes to a question of its practical application. In the first place, it will be observed that in the two cases I have

mentioned the capital appreciation had been realised before any question of distribution arose; and as regards realised accretions to capital there can (subject to the other qualifications I shall mention) be no difficulty in applying the rule. In this connection I may perhaps draw attention to the definition of realised profits given by Kay, J., in *Re Oxford Benefit Building & Investment Society*, 35 Ch. D. 502, where, at p. 510, he says that "realised" must have "its ordinary commercial meaning, which, if not equivalent to 'reduced to actual cash in hand' must at least be 'rendered tangible for the purpose of division.'" Suppose, however, that the appreciation has not been realised. It would appear from the remarks of Romer, J., in *Bolton* v. *Natal Land & Colonization Co.* [1892] 2 Ch. 124, at p. 133, that it is erroneous to bring in as profits a nominal increase of the value of capital assets. On the other hand, in the unreported case of *Midland Land & Investment Corporation Ltd.* (a note of which appears on p. 814 of Palmer's "Company Precedents," 14th ed., Pt. I), a valuation had been made of the company's assets, which comprised land, ground rents, contracts and options, and on the basis of this valuation the company's assets exceeded its liabilities by £100,000. Out of this, £20,000 had been distributed as dividend. Subsequently, the assets realised far less than the sum estimated. Chitty, J., held that the directors were not liable, and said: "In declaring a dividend . . . the directors are entitled to put an estimate on the value of their assets from time to time in order to ascertain whether there is or is not a surplus remaining after providing for liabilities; and where they make these valuations from time to time on a just and fair basis and take all the precautions which ordinary prudent men of business engaged in a similar business would do, they are entitled to treat the surplus thus ascertained as profit." He went on to say, however, that the nature of the business is always material, and drew a distinction between trading concerns dealing in goods and with a rapid turnover, where an accurate valuation is comparatively simple, and businesses of a speculative nature, where the turnover is not rapid and the market liable to great fluctuations so that a valuation requires more caution and judgment.

The absence of decisive authority on the point makes it at least doubtful whether unrealised accretions to capital can be properly distributed as dividend, especially where the valuation is of a comparatively tentative character; so that it is necessary to qualify the general rule established by *Lubbock's Case* by excepting, save in especial cases, capital appreciation which has not been realised.

The second qualification results from the decision in *Foster* v. *New Trinidad Lake Asphalte Co. Ltd.* [1901] 1 Ch. 208. The company had in 1897 purchased the property and assets of another company and included therein were promissory notes for some £25,000 given to the other company in 1894 by X. The notes had never been considered of any value and had never appeared as assets in the defendant company's balance sheets. In 1900 the notes were paid off with arrears of interest, and the directors proposed to treat the whole sum as a windfall in the nature of an unexpected profit and divisible as dividends. Byrne, J., held that this could not be done without reference to the other business or assets of the company. It was clear, he said, from the decision in *Lubbock's Case* that an appreciation in total value of capital assets, if duly realised by sale or getting in of some portion of such assets, may in a proper case be treated as available for purposes of dividend. But "the question of what is profit available for dividend depends upon the result of the whole accounts fairly taken for the year, capital as well as profit and loss, and although dividends may be paid out of earned profits in proper cases, although there has been a depreciation of capital, I do not think that a realised accretion to the estimated value of one item of the capital assets can be deemed to be profit divisible amongst the shareholders, without reference to the result of the whole accounts fairly taken."

The third qualification and one, as will be realised, of the utmost importance, is that the power to divide realised accretions to capital assets must be given or at least not prohibited by the constitution of the company. No difficulty would arise in this connection (I am assuming the absence of an express article on the point) if the relevant article were in the form of Clause 91 of Table A. "No dividends shall be paid otherwise than out of profits." But if it were in the not uncommon form "No dividends shall be paid otherwise than out of the profits arising from the business of the Company" it would appear that accretions to capital would not be available for dividend. Increments arising from capital appreciation are not for this purpose the same thing as profits produced by the employment of capital assets. This was one of the grounds for the decision in *Wall* v. *London and Provincial Trust Limited* [1920] 1 Ch. 45; [1920] 2 Ch. 582, where, owing to the general fall in the value of securities, debenture stock had been redeemed at a discount and the directors were proposing to distribute the whole amount of this discount as profits. There was the further feature in that case that the company (a trust investment company) ascertained its divisible profits on the double account system, i.e., profit or loss on a change of investment was carried to capital account and net receipts over expenditure were carried to revenue account and became available for dividend without regard to any depreciation in the value of investments. It was held that the transfer from the one account to the other is inadmissible in companies adopting the double account system. "The price of being entitled to distribute as dividend a revenue balance regardless of a capital loss is that you may not supplement a deficiency of revenue by carrying to the credit of that account a gain on capital however realised." [1920] 1 Ch. at pp. 55–56.

To sum up, the position may I think be fairly stated thus: If a company's constitution and system of accounts permit, realised accretions to capital may be distributed as dividends provided the accretions result from an appreciation in value of the capital assets as a whole.

A Conveyancer's Diary.

Appointment of Company as both Custodian Trustee and Managing Trustee. Power to Charge.

A VERY interesting point was decided in the recent case of *Forster and another* v. *Williams Deacon's Bank, Ltd.* (79 SOL. J. 145); also reported in *The Times* for 7th February. The question has not, I think, been raised in any case before, and I do not remember ever seeing any discussion upon it. At any rate, it was a new point to me.

A sole trustee under the will of a testator desired to be discharged from the trusts and of appointing the defendant bank (a trust corporation) to be trustee in his place. Accordingly a deed was executed, which declared as follows:—

"1. In pursuance of the power for this purpose conferred by the Trustee Act, 1925, and by the Public Trustee Act, 1906, and of all other powers him hereunto enabling, the present trustee hereby appoints the bank to be (*a*) Sole managing trustee of the said will in the place of the present trustee, and (*b*) Custodian trustee of the said will.

"2. The bank whilst acting as trustee of the said will shall be treated not only as a managing trustee, but separately as custodian trustee, with such functions, duties and powers as appertain to a custodian trustee under s. 4 of the Public Trustee Act, 1906, and may act as such managing trustee and custodian trustee respectively by its proper officer or officers.

"3. The bank whilst acting as custodian trustee of the said will shall be entitled to receive by way of remuneration for its services as such trustee out of the property subject to the trusts of the said will such fees as would for the time

being be chargeable by the Public Trustee if he were custodian trustee of the said will."

The will itself did not give any power to trustees to charge.

The whole question was whether the bank was entitled to charge for acting as trustees or not. That involved, of course, the question whether a trust corporation could act in the dual capacity of a managing trustee and a custodian trustee.

It was said that the provisions of the Public Trustee Act enabling a custodian trustee to be appointed postulate that there is some other person acting as what the Act calls a "managing trustee," and that unless there were such another trustee there was no power to appoint a custodian trustee. The result, of course, would be that the purported appointment, in this case of the bank, as a custodian trustee, was nugatory, and as the only right to charge was as a custodian trustee the bank was not entitled to any remuneration.

In order to see how far that contention could hold good, it is necessary to look closely at the pertinent provisions of the P.T.A., 1906.

By s. 2 of the Act it is enacted (*inter alia*) that the public trustee may act as a custodian trustee, and that he may act either alone or jointly with any person or body of persons.

The important section for the present purpose is s. 4.

Sub-section (1) of that section provides that, subject to rules under the Act, the public trustee may, if he consents to act as such, and whether or not the number of trustees has been reduced below the original number, be appointed to be a custodian trustee of any trust—

(*a*) by order of the court made on the application of any person on whose application the court may order the appointment of a new trustee; or

(*b*) by the testator, settlor or other creator of any trust; or

(*c*) by the person having power to appoint a new trustee.

Sub-section (2) enacts that where the public trustee is appointed to be a custodian trustee of any trust, then (*inter alia*):—

(*b*) The management of the trust property and the exercise of any power or discretion exerciseable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the managing trustees).

Sub-clause (*c*) provides for the custody of all documents appertaining to the trust being in the possession of the custodian trustee.

Sub-clause (*d*) enacts that the custodian trustee is to concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them.

Sub-clause (*e*) provides for the payment of all money being made to the custodian trustee.

There are other provisions in the sub-section which seem to show that it was contemplated that there would always be managing trustees where there was a custodian trustee, but those which I have mentioned will I think suffice.

Then there is sub-s. (3), which reads:—

"The provisions of this section shall apply in like manner as to the Public Trustee to any banking or insurance company or other body corporate entitled by Rules made under this Act to act as custodian trustee with power for such company or body corporate to charge retain or pay out of the trust property fees not exceeding the fees chargeable by the Public Trustee as custodian trustee."

Perhaps I may comment first of all on this section that, whilst there is power for the public trustee to charge when acting as an ordinary trustee, no such power is conferred on any such company or body corporate as is referred to in sub-s. (3). The only statutory authority for charges being made by such a company or body is where it is acting as a custodian trustee, although, of course, power may be given to an ordinary trustee to charge by the instrument creating the trust.

Now, it certainly would appear, in reading the sections of the P.T.A., 1906, to which I have referred, that provision is only made for the appointment of a custodian trustee where there are other trustees to act as managing trustees. Throughout s. 4 it seems to be assumed that there would be other trustees to exercise the powers and discretions necessary for carrying out the trust. It is true that nowhere is it specifically stated that there must be such other trustees, but it is clear that the section contemplates that there would be.

That especially is plain from sub-s. (2) (*b*), which provides for all powers and discretions remaining vested in the managing trustees, and from sub-cl. (*c*) of the same sub-section, which requires the custodian trustee to concur in and perform all acts necessary to enable the managing trustees to exercise their powers.

In *Forster* v. *Williams Deacon's Bank*, *supra*, Bennett, J., was not impressed with that view of the matter. His lordship held that there being no absolute prohibition against an authorised company or corporation from acting as both custodian trustee and managing trustee, he was not prepared to imply any such prohibition. The learned judge, as I gather, was of opinion that the public trustee (and therefore an authorised company or corporation) could be managing trustee jointly with others, and also as custodian trustee alone. Then, his lordship appears to have said that in such a case if the other trustees died or ceased to be trustees, the public trustee could continue to act in both capacities, and consequently there was no reason in the absence of express provision to the contrary in the Act, why the public trustee could not be appointed to act in both capacities.

However, the Court of Appeal did not take that view, and the decision of Bennett, J., was reversed.

The Master of the Rolls seems to have relied mainly upon ss. 2 and 4 of the P.T.A., 1906, as showing that there must be other trustees to act as managing trustees in order that there might be a custodian trustee.

His lordship added in dealing with the effect of the appointment (I quote from *The Times*):—

"It was said by the plaintiffs that it was impossible for the bank to call themselves a custodian trustee and that when the deed of appointment was considered it really operated to make the bank a trustee with no qualification at all, however much it might have been sought to divide the duties into compartments. It would seem that the appointment must be treated either as effective, and if so as operating to appoint the bank to be a trustee *sans phrase* or ineffective, and inoperative if it set out to do what could not be done. It was unnecessary to decide between those two alternative views. In either case the bank were not entitled to charge fees for acting as custodian trustee."

Leave to appeal was given on the terms of the bank paying the plaintiff's costs in any event. So perhaps we have not heard the last of this case.

Priority Notices.

I AM afraid that through what I can only describe as sheer carelessness I wrongly stated the position with regard to priority notices, and I am obliged to the many correspondents who have quite rightly descended heavily upon me for it.

The priority notice should be given at least two days before completion, and the applicant has fourteen days in which to complete and register the charge instrument or other matter to which the notice relates.

Local Land Charges. Official Searches.

WITH reference to the letter of Messrs. Keene & Co., which appeared in the correspondence column of the issue of the 9th February, at p. 107, I think that a local authority is bound to issue official certificates of search under L.C.A., 1925, s. 15 (3), and I do not see how any covering letter could have any effect. At any rate a purchaser would be safe in accepting the certificate.

Landlord and Tenant Notebook.

Peaceable Re-entry on Forfeiture.

The value of a writ for possession issued by a landlord who has exercised a right of re-entry lies not only in the fact that it commences an action but also in the circumstance that it is an unequivocal election, equivalent to physical entry. After that he can even receive "rent" without exposing himself to a charge of waiving the forfeiture. This no doubt accounts largely for the popularity of the method in question; but the fact remains that possession can be recovered without recourse to legal process.

There are, of course, pitfalls. Forcible entry of inhabited premises is particularly discouraged by the criminal law. And the statutory provisions for forfeiture notices apply in the case of peaceable re-entry whenever they apply in any other case: "By action *or otherwise*" says L.P.A., s. 146 (1). This was last illustrated in *Re Riggs*: *Ex parte Lovell* [1901] 2 K.B. 16, a claim by a trustee in bankruptcy of a tenant against a landlord who had taken possession on the ground of forfeiture, the relevant cause being the bankruptcy itself. The landlord had omitted to serve the required notices, and his hurried action was perhaps due to the fact that it was not the usual case of cutting a loss; he stood to gain considerably, for in a few years' time the tenant would have been entitled to a conveyance of the freehold interest, the lease being virtually a hire-purchase agreement. The trustee's claim for a declaration succeeded.

Then there is the difficulty alluded to in my opening paragraph; if not by a writ, how should the landlord manifest his election? Here it is necessary, in the first place, to examine the proviso in the lease, for these are not even to-day all alike. In *Fenn* v. *Smart* (1810), 12 Ea. 444, Bayley, J., interposed, in the course of an argument, an observation to the effect that a proviso that on certain events a landlord "might re-enter" demanded a physical entry, but a proviso that in those events the term should "cease and determine" avoided the necessity for attendance in the flesh. While a writ is now as good as physical entry, the importance of the apparently fatuous distinction was emphasised early in the present century in *Moore* v. *Ullcoats Mining Co. Ltd.* [1908] 1 Ch. 575, when landlords sought to rely on notices demanding possession as evidence of unequivocal and irrevocable election to forfeit. As the forfeiture clause spoke of "re-entry" only the contention failed; and though a writ had since been issued, it asked for an injunction to restrain the breaches of covenant complained of as well as for possession, and in consequence of this equivocation, the action failed too.

At the same time, I think that Warrington, J.'s qualification in the above case of Bayley, J.'s remark: "or he must do that which is in law equivalent to re-entry, *namely, commence an action,*" etc., goes farther than was intended. Its words cannot express election, there are other unequivocal acts short of entry, e.g., letting to a third party, as in *Baylis* v. *Le Gros* (1858), 4 C.B. (N.S.) 537.

Non-payment of rent is, of course, one of those causes of forfeiture which require no statutory notice. A fair example of how it can be done was afforded by the facts of *Howard* v. *Fanshawe* [1895] 2 Ch. 581. The defendant in that case had granted, in 1892, leases of two unfinished houses to one E, their builder. E had deposited them with the plaintiff to secure loans. In February, 1894, E was adjudicated bankrupt; he then owed the defendant a small sum in ground rent. Three weeks later an army of occupation consisting of a land agent's clerk, directed by a general staff consisting of the defendant's solicitors, entered each house by the back door and affixed a notice to the front door proclaiming that possession had been taken on the defendant's behalf. True, three weeks earlier there had been, according to previous paragraphs of the report, no back doors; and as it seems unlikely in the state of affairs obtaining that anyone would trouble to provide and hang them in that period, I assume that the second reference is metaphorical.

As regards law, what the case decided was that the provisions of the Common Law Procedure Act, 1852, ss. 210 *et seq.*, apply in the case of peaceable re-entry just as they do in the case of forfeiture enforced by a writ, though the preamble to the original enactment (4 Geo. 2, c. 28) shows that it was the latter proceeding that the Legislature had most in mind. We are indebted to the sporting instincts of the plaintiff for this authority, for, after he had tendered, in June, the £9 7s. 6d. ground rent then due and the tender had been refused, he bought, in July, the tenant's interest from the trustee in bankruptcy for the sum of £5. As Pothier has put it: "Une simple espérance peut même être l'objet d'un contrat de vente." And next day he issued his writ claiming possession subject to the covenants, and relief against the forfeiture on payment of rent and costs. The point at issue was neatly summarised by Stirling, J., in a troublesome question put to counsel: "Why should the arm of the court be shortened by the circumstance that the lessor has obtained peaceable possession without the assistance of the court?" The answer given, that the statute merely endorsed equity's policy which was directed against the rigours of the common law only, did not lack ingenuity; and counsel might have added that it was not for him to explain, but merely to expound, law. But the learned judge, reviewing the authorities, particularly those which describe this proviso as a "mere security for the payment of the rent," at length, gave the enterprising plaintiff the order sought.

Our County Court Letter.

THE COMPANIES ACT, 1929, s. 264 (3).

In a recent case at Bristol County Court (*In re Mereweather and Sons Limited; The Liquidator* v. *National Provincial Bank Limited*) the claim was for £1,525 3s. 1d., which the bank had advanced for the purpose of paying wages, and in respect of which priority was claimed. The evidence was that the company was formed in 1931, debentures were issued between January and December, 1932, and a receiver was appointed in April, 1933. The receiver for the debenture-holders was also subsequently appointed liquidator, and he contended that the only evidence that the money was advanced for the purpose of paying wages was that the account was called a wages account, which appeared to be an insufficient ground for admitting the claim as preferential. The case for the bank was that the actual cheques were also marked "wages account," and that the money was advanced for the specific purpose of paying wages within the statutory period. His Honour Judge Parsons, K.C., held that the liquidator had taken the proper course, but the bank's claim to priority was established. An order was made accordingly, the costs of all parties to be costs in the liquidation.

LIABILITY FOR WITNESS FEES.

In the recent case of *Vigers* v. *Counter*, at Okehampton County Court, the claim was for 9s. 6d. as the cost of attending on subpœna at the county court last November. The plaintiff's case was that he had only received 1s. conduct money, although he was employed as a gardener at 30s. a week by a Mr. Stephenson. The defendant's case was that the plaintiff worked for his father (through whom he sued as next friend) and should be classed as an agricultural worker at 19s. 9d. a week. Moreover, the plaintiff had not been called as a witness, and his claim was excessive. His Honour Judge Wethered held that, although the plaintiff had not given evidence on his subpœna, he was entitled (under the implied contract) to the cost of his travelling, sustenance and loss of time. The last two items were assessed at 1s. 6d. (for luncheon)

and 5s. respectively, and judgment was therefore given for 6s. 6d. In a similar case (*Holman* v. *Counter*) at the same court, judgment was given for the plaintiff for 17s.

THE VALIDITY OF CATTLE WARRANTIES.

In *Mower* v. *Duncan*, recently heard at Bakewell County Court, the claim was for £18 as damages for breach of warranty, or as money paid for a consideration which had failed. The plaintiff's case was that in July he had bought a red cow, described as straight and a good milker, with a yield which would eventually reach five gallons a day. The cow was found to be wrong in one quarter, and she also had pneumonia, but the defendant contended that this was not chronic (as alleged by the plaintiff), but had arisen since the sale, i.e., through lack of treatment at the farm at which the cow was agisted. The defendant's veterinary surgeon stated that the cow (on being returned by the plaintiff) was not suffering from tuberculosis, and she must have been straight when sold, or she would not have been yielding daily 3½ gallons of milk after calving. The defendant's case was that the disease had been contracted in transit after the sale, as the parties had met a few days later, and the plaintiff had not then alleged that the cow was a "screw," although he wrote later to that effect. His Honour Judge Longson gave judgment for the defendant, with costs.

Obituary.

Mr. W. BOWSTEAD.

Mr. William Bowstead, barrister-at-law, of Harcourt-buildings, Temple, Secretary to the Lord Chief Justice, died at Stonebridge Park, N.W., on Sunday, 17th February. Mr. Bowstead was called to the Bar by the Middle Temple in 1893, taking a certificate of honour in the final examination. He had practised on the South-Eastern Circuit and had been Secretary to the Lord Chief Justice for many years.

Mr. W. A. INDERWICK.

Mr. Walter Andrew Inderwick, Senior Registrar of the High Court of Justice, Probate Division, died on Friday, the 15th February, his sixty-fifth birthday. The youngest son of the late Mr. F. A. Inderwick, K.C., he was educated at Winchester and Magdalen College, Oxford, and was called to the Bar by the Inner Temple in 1894. He practised in London and on the South-Eastern Circuit, and in 1902 he was appointed Registrar of the Probate Registry at Norwich. About a year later he was promoted to be a Registrar at the Principal Probate and Divorce Registry in London, and in 1923 he became Senior Registrar.

Mr. C. T. WILLIAMS.

Mr. Charles Thomas Williams, M.A., barrister-at-law, of Brick Court, Temple, died at Virginia Water, Surrey, on Tuesday, 19th February, at the age of fifty-seven. Mr. Williams was called to the Bar by the Middle Temple in 1909. He was formerly a member of Wimbledon Borough Council.

Mr. J. G. DAVIES.

Mr. Joseph Gordon Davies, solicitor, a partner in the firm of Messrs. Joseph Davies & Son, of Aberystwyth, died at Llanbadarn Fawr, near Aberystwyth, on Saturday, the 16th February, at the age of forty-six. Mr. Davies was admitted a solicitor in 1911.

Mr. S. RUSSELL.

Mr. Stebbing Russell, solicitor, a partner in the firm of Messrs. Russell & Arnholz, of Great Winchester-street, E.C., died at Hampstead on Saturday, 16th February. Mr. Russell was admitted a solicitor in 1888, and was awarded the New Inn Prize.

Mr. F. W. SKARDON.

Mr. Frederick William Skardon, solicitor, senior partner in the firm of Messrs. Skardon & Phillips, of Plymouth, died on Thursday, 14th February, at the age of seventy-six. Mr. Skardon was admitted a solicitor in 1880.

Miss G. TAYLOR.

Miss Gillian Taylor, solicitor, of Buxton, died recently at the age of thirty-five. Miss Taylor, who was admitted a solicitor in 1925, was in partnership with her father, Mr. Sydney Taylor, Coroner for the High Peak Division of Derbyshire, in the firm of Messrs. Sydney Taylor & Daughter, of Buxton. She took a keen interest in English folk dancing.

Mr. H. E. WILKES.

Mr. Henry Edwin Wilkes, solicitor, of Stowmarket, Suffolk, died on Friday, 15th February. Mr. Wilkes was admitted a solicitor in 1892, and had practised at Stowmarket ever since. He held the appointments of Clerk to the East Stow Rural District Council, the Thedwastre Rural District Council, and the South-West Suffolk Assessment Committee and of Superintendent Registrar of the Stow District.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

Searches.

Sir,—I have been reading with interest the notes upon searches contained in "A Conveyancer's Diary" in The Solicitors' Journal for the 19th and 26th January.

There is one search, however, to which he does not refer, and which seems to me of importance, and, that is, the search at Somerset House to see whether there is noted upon the Probate Act or the Administration Act the appointment of a judicial trustee in place of the executor or the administrator.

It will be remembered that by virtue of the provisions of sub-s. (2) of s. 1 of the Judicial Trustees Act, 1896, an executor or administrator is a trustee and the administration of a testator's or intestate's estate is a trust.

The effect of this provision is that when the court appoints a judicial trustee in the place of either an executor or an administrator the executor and administrator are divested of any legal estate in consequence of the vesting order made by the Court of Chancery.

Wherever the original grant of probate or letters of administration can be obtained they are carried into the registry and revoked, but there are cases where those documents cannot be obtained and remain at large, and in those cases a note is made upon either the Probate Act or the Administration Act referring to the order in the Chancery Division appointing a judicial trustee in the place of either the executor or administrator.

The order of the Chancery Division would usually, of course, be registered as a land charge; but even if not registered would it not have divested the personal representatives of the legal estate?

31st January. Subscriber.

Mr. William Onslow Times, solicitor, of Hitchin, left property of the gross value of £22,704, with net personalty £10,415. He left the house in the occupation of the Red Cross Clinic, the Old Free School, and the Old Guild Room, the furniture and effects therein, and £500 in trust for the Hitchin Church Adult Class; £100 to the Church Missionary Society; £100 to the Society for the Propagation of the Gospel; and £100 to the Parochial Church Council of St. Mary, Hitchin.

Mr. Frederick Hammond Clark, solicitor, of Great St. Helen's, E.C., and of Wanstead, left £38,057, with net personalty £34,540.

To-day and Yesterday.

LEGAL CALENDAR.

18 FEBRUARY.—Edward Hyde, who was born at Dinton on the 18th February, 1609, was the son of a member of the Middle Temple, who, having married a Wiltshire lady "of good fortune in the account of that age," had settled down to the life of a country squire. Though he was acknowledged to be "a young man of parts and pregnancy of wit," his lack of industry did not mark him as a future Chancellor. Even after joining the Middle Temple, he idled in dissolute company, and his first serious taste of the law when he went on circuit as the Marshal of his uncle, Chief Justice Hyde, was not encouraging, for he caught small-pox at the first assize town.

19 FEBRUARY.—Chief Justice Tresilian, the friend of Richard II, was one of the most unfortunate of our judges, for, riding with the King in his early quarrel with the Parliament, he incurred the deadly hatred of the party which had seized power. Though he might have escaped abroad, he was bold enough to return to Westminster disguised as a farmer to watch the course of events. He fixed his quarters in an ale-house overlooking the Palace gate, but one day, as he was looking out of his window, he was recognised. He was arrested and executed on the 19th February, 1388.

20 FEBRUARY.—*Fraser* v. *Bagley*, heard before Tindal, C.J., on the 20th February, 1844, saw more mud-slinging than life in the Temple usually justifies. The parties, who were both barristers, occupied adjoining chambers at 11, King's Bench-walk, and the action was for "crim. con." The plaintiff alleged that in financial straits he had applied for help to the defendant who had used the opportunities thus afforded to seduce his wife. The defendant denied this and alleged that the plaintiff was a dissolute bankrupt who had only married for money and had used his wife's means to finance his infidelities. The jury took three minutes to find for the defendant.

21 FEBRUARY.—When the Civil War broke out, David Jenkins, one of the Welsh judges, espoused the Royalist cause and took up arms for the King. He was captured and an ordinance for his attainder having been passed, he was on the 21st February, 1648, brought to the bar of the House of Commons by the serjeant at arms. Absolutely refusing to kneel or do any other obeisance, he was fined £1,000. Then the ordinance was read to him, but he denied the power of the House to charge him and "ran into a discourse of many particulars touching the laws of the land." It was finally decided to spare his life.

22 FEBRUARY.—On the 22nd February, 1828, Lord Stowell, Lord Eldon's brother, was forced by old age to resign his judgeship in the Admiralty Court.

23 FEBRUARY.—Vere Bertie, who was called to the Bar in 1659, was happy in being the son of the Lord Chamberlain, the Earl of Lindsay. Family connections secured professional advancement for him, and though he has left no trace of forensic eminence, he was appointed a judge of the Court of Exchequer in 1675. Three years later, he was transferred to the Common Pleas, but in 1679 he was dismissed. He died on the 23rd February, 1681, and was buried in the Temple Church.

24 FEBRUARY.—At the Carlisle Assizes on the 24th February, 1862, William Charlton, an engine driver, was indicted for the murder of Jane Emmerson, an old woman who looked after the gates at a level crossing at Durren Hill. One night, just after she had let the last train through, she had been brutally battered and her cottage had been ransacked. His footprints brought the crime home to the prisoner, but the jury with characteristic inconsequence recommended him to mercy on the ground of his previous good character. He was hanged.

THE WEEK'S PERSONALITY.

By comparison with the reputation of Lord Eldon, his brother, Lord Stowell, is hardly remembered at all, yet as a judge he ranks with Mansfield and Hale, and it is on the foundation laid by him that the reputation of the Court of Admiralty stands so solidly in the confidence of the whole world. For thirty years he was judge of that court, and to him fell the decision of the innumerable maritime cases which arose out of the Napoleonic Wars. He was called upon to fulfil the functions of a law-giver rather than a judge, bestowing unity and consistency on a whole branch of English law. "His judgment was of the highest cast, calm, firm, enlarged, penetrating, profound. His powers of reasoning were in proportion great and still more refined than extensive. . . . If ever the praise of being luminous could be bestowed upon human composition, it was upon his judgments." In person he was short and fat, with a very benignant expression of face. His dress was almost as slovenly as that of his friend Dr. Johnson, but his manner was courteous and polished. According to his brother, he took no exercise but that of eating and drinking, his mental activity absorbing all his energy. All his life he was welcomed in the highest society as a wit and a scholar.

THE CIRCUITS DEFENDED.

The defence of the circuit system delivered by the Lord Chief Justice at the opening of the Hertford Assizes was as timely as it was heartfelt. Though Day, J., was the last judge to "ride the circuits" in a literal equestrian sense, and since his time much has been said of the iron way which is supposed to have destroyed their vitality, it is good to hear from such high judicial authority a refusal to "follow the hearse of the circuit system." Indeed, not a few would wish to see some revival of the traditional glories of the assizes. As Mr. Baron Platt once said to the Grand Jury at Newcastle on an occasion when his reception had lacked due ceremony: "It is not merely as judges that we come here. We are ministers under the royal commission. We have the honour to attend before you under the commission or sign-manual of Her Majesty. Where any disloyalty or any disregard to the administration of justice is considered a slur, I do regret that the ordinary and usual garniture by which that loyalty is displayed should not have been exhibited on the present occasion."

ASSIZE CONTRASTS.

An amusing contrast between the English and Irish circuits at the beginning of the last century is drawn in the charge of Mr. Justice Fletcher to the Grand Jury of Wexford in 1814. "As I passed through Callan, an escort of a few dragoons attended me. This by-the-bye is one of the mischiefs of those alarms—a mischief which never occurs in England. There, the gentlemen of consideration in the county come out to meet the judge with led horses and equipages, and with every suitable mark of respect and attention . . . But what was the case in Kilkenny? The high sheriff not appearing at all . . . the sub-sheriff unwilling enough to be burdened with the trouble and anxious to get rid of us, two or three miserable bailiffs mounted upon wretched little horses, brandishing an enormous length of halbert, resembling so many Cossacks in everything but utility, and attended by an escort of four or five dragoons, for the sheriff is not at the expense of paying the dragoons. Indeed, where needy or penurious high sheriffs are nominated . . . an improper and insufficient attendance upon the circuit judges is to be expected. Thus attended, or rather unattended, we drove through Callan."

A new law for the Island of Guernsey, banning the taking of photographs in police courts and at other legal proceedings, was passed on Saturday, the 16th February, by the Royal Court at St. Peter Port, Guernsey.

Notes of Cases.

House of Lords.

Elliot *v.* Joicey.

Lord Tomlin, Lord Russell of Killowen and Lord Macmillan. 14th February, 1935.

WILL—GIFT TO CHILDREN—POSTHUMOUS CHILD.

This was an appeal from the Court of Appeal, dated 9th October, 1933, affirming Clauson, J.

The appellant, Robert Barnewell Elliot, and the respondent, James Kerr Elliot, were two of the three sons of Mrs. Rose Elliot, the daughter of the testator, John Joicey, and she died on 12th January, 1912. She had a third son, Thomas William Henry Elliot, who died intestate on 11th May, 1932. He had married on 14th April, 1931, and on 12th June, 1932, a month and a day after his death, his widow gave birth to a son, Mark Henry Elliot. The question on which the case depended was whether according to the construction of the will of Mrs. Rose Elliot, her son, Thomas William Henry Elliot, died leaving any issue him surviving having regard to the fact that a posthumous child was born to him alive on 12th June, 1932. Clauson, J., held that the share in question passed to the respondent, J. G. G. Leadbetter, as representative of the estate of T. W. H. Elliot, and that decision was upheld by the Court of Appeal. The defendant, R. B. Elliot, now appealed.

Lord TOMLIN, in giving judgment, said he concurred in all respects with the judgment of Lord Russell, and therefore it was unnecessary for him to do more than state shortly the main reasons why he thought the courts below had erred. The first question was one of construction. The critical words were in the two phrases: "In the event of such child of mine leaving any issue him or her surviving" and "in the event of such child of mine not leaving any issue him or her surviving." He could not think on the construction of those words a posthumous child of a child of the testatrix was issue left by the parent him surviving. The expression "leaving any issue him or her surviving" was not in its ordinary or natural meaning appropriate to a posthumous child, and there was nothing in the context to justify the extension of the meaning. The child did not take and could not take under the gift. The courts below had taken the view that it must be for the child's benefit that its parent's estate should be increased. The application of that rule could not depend on the way in which the parent disposed of his estate or on his domicile at his death. He did not think the enrichment of the parent's estate was a benefit to the child within the meaning of the rule. The rule contemplated a benefit taken by the child under the instrument as a result of the application of the rule. To give to the rule any other operation would be to make it a rule of great uncertainty and difficult of application. In his opinion the appeal should succeed.

Lord RUSSELL OF KILLOWEN, in giving judgment, referred to a number of authorities, and said *Villar* v. *Gilbey* [1907] A.C. 139, was the most recent decision in their lordships' House, and required close attention. When it left the Court of Appeal it contained a defined rule of construction applicable to wills which he thought could easily have been applied to the present will, but the House of Lords declined to accept that view of the law. According to the law of England as it now stood the appeal must succeed. With regard to Scots law it would seem that the fictional construction was inadmissible. The only person who had appealed from Clauson, J., and the Court of Appeal, was the defendant, R. B. Elliot.

Lord MACMILLAN gave judgment to the same effect.

COUNSEL: *Wilfrid Greene*, K.C., and *J. W. J. Cremlyn*; *H. B. Vaisey*, K.C., and *Norman C. Armitage*.

SOLICITORS: *Coulson & Coulson*; *Walker, Martineau & Co.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Charrington & Co. Limited *v.* Simpson.

Lord Tomlin, Lord Russell of Killowen and Lord Macmillan. 15th February, 1935.

LICENSED PREMISES—COMPENSATION—EXPIRATION OF LEASE—MEASURE OF GOODWILL.

This was an appeal from the Court of Appeal, by which the appeal of the respondent Simpson from the Divisional Court was allowed. The appeal involved the construction of certain sections of the Landlord and Tenant Act, 1927, the substantial question being as to compensation due to a tenant of licensed premises at the expiration of the lease. The tenant had carried on business at the premises in question for twenty-one years. The tenancy expired on 25th March, 1932, and the respondent presented to the appellants a claim under the Landlord and Tenant Act, limited after litigation had begun, to a claim for a new lease under s. 5 of the Act. On 1st June, 1931, proceedings were commenced in the Lambeth County Court by the respondent to enforce the claim which was referred for inquiry and report to a referee appointed for the purposes of the Act, who found that the respondent had attached a valuable goodwill to the premises. The deputy judge dismissed the respondent's claim to be granted a new lease. That order was affirmed by the Divisional Court, but on appeal to the Court of Appeal the decisions below were reversed and the case was sent back to the county court for reconsideration, the Court of Appeal holding that the deputy judge had misdirected himself.

Lord TOMLIN, in giving judgment, said it was to be noted that to establish his right to a new lease under s. 5 of the Landlord and Tenant Act, 1927, the tenant must establish that he would be entitled to compensation under s. 4, and that the compensation under that section would not compensate for the loss of goodwill which he would suffer if he removed and carried on business elsewhere. With regard to the measure of compensation, the measure was not the value of the goodwill which the tenant lost but what the landlord gained by such addition in the value of the holding as the direct result of carrying on the business by the tenant. The deputy judge held that the tenant had failed to take the first step because, although goodwill was proved to have become attached to the premises so that they could be let at a higher rental, the attachment was due to extraneous circumstances the consideration of which was inevitable in order to deal with the matter in accordance with the section. Where the deputy judge spoke of the goodwill being increased in value, what he was really referring to was the increase in trade, and what he was deciding was that having regard to the peculiar monopoly which those premises enjoyed no goodwill could in fact become attached to them by reason of the business in the ordinary way. The emphasis was on the phrase "in the case of this off-licence in this situation." Those considerations led him to the conclusion that the appeal should be allowed. It would, no doubt, have been permissible to leave the case without dealing with the second point as to the effect of proviso (*c*). The question, however, was of importance outside the merits of this one. The proviso did not say that no compensation was payable where no business was carried on except that of the sale of intoxicating liquors; on the contrary, it suggested that a sum might be payable. The order of the Court of Appeal should be reversed and the judgment of the deputy county court judge should be restored. There would be no costs on either side of this appeal or of the proceedings in the Divisional Court or the Court of Appeal.

Lord RUSSELL OF KILLOWEN and Lord MACMILLAN delivered judgments to the same effect.

COUNSEL: *Wilfrid Greene*, K.C., and *H. O'Hagan*; *R. M. Montgomery*, K.C., and *Claude H. Grundy*.

SOLICITORS: *Godden, Holme & Ward*; *Spring & Sons.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

In re Lovegrove; *Ex parte* Applestone and Another *v.* The Trustees.

Lord Hanworth, M.R., Romer and Maugham, L.JJ.
1st, 11th and 12th February, 1935.

Bankruptcy—Furniture Manufacturer—Loan—Formation of Sales Company—Agreement for Sale and Purchase of Goods—Object to Obtain Immediate Payment—Form of Transaction—Bills of Sale Act, 1878 (41 & 42 Vict., c. 31), ss. 3 and 4—Bills of Sale (1878) Amendment Act, 1882 (45 & 46 Vict., c. 43)—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 43.

Appeal from a decision of Farwell, J.

The bankrupt was a furniture manufacturer. In 1933, being short of liquid capital, he approached Applestone. In September, 1933, G. Lovegrove & Co. (Sales) Ltd., was incorporated with a capital of 100 shares of £1 each, ninety-eight of which were allotted to Applestone. The bankrupt mortgaged to the sales company existing book debts to secure a loan of £5,094. A like sum was in fact paid by Applestone to the sales company, partly in respect of shares, and partly as a loan. By a further agreement, the bankrupt agreed to sell to the sales company from time to time all such goods manufactured by him as it should need for its business, at 10 per cent. less than the invoiced price on the terms that the goods should be re-sold by the sales company to his customers. It was provided that the sales company's profit from such sales should not exceed £2,500 in any one year, the excess being repaid to Lovegrove. A memorandum was also signed agreeing that the £5,094 was to be treated as though it were the amount paid by the sales company to the bankrupt as the purchase price of goods sold by it to customers. In the subsequent sales of furniture, the goods never passed through the hands of the sales company and its name did not figure on the delivery notes. In 1934, Lovegrove was adjudicated bankrupt. By then all the book debts originally mortgaged had been collected, but considerable sums were due for goods supplied since the agreement as to sales. Farwell, J., held that this agreement was void against the trustees in bankruptcy, and that all debts from customers formed part of the bankrupt's property.

Lord Hanworth, M.R., allowing the appeal, said, that the transaction was an honest one, but it was contended that the agreement purporting to provide for the sale of goods to the company for cash and their re-sale by the company on credit was not the real bargain, but that there was in fact a loan on the security of chattels. In reading s. 4 of the Bills of Sale Act, 1878, it was important to remember s. 3 which was not repealed by the Bills of Sale (1878) Amendment Act, 1882. The danger aimed at by the Acts was that of a secret document giving power to a person unknown to seize chattels covered by a bill of sale. It was argued that the words covering this case were "assurances of personal chattels." The agreement provided a code under which the sales were to be carried out, but gave the sales company no security over the goods themselves. The question as to what is an assurance was considered in *North Central Wagon Co.* v. *Manchester, Sheffield & Lincolnshire Railway Co.*, 35 Ch. D. 191. This was not an assurance of personal chattels, and the document could not be avoided as coming within the Bills of Sale Acts. It was also argued that it was void under s. 43 of the Bankruptcy Act, 1914, as being an assignment of book debts. However, this was an honest transaction intended to obtain for Lovegrove immediate payment of goods he would otherwise have had to sell on credit, and not an assignment of book debts.

Romer and Maugham, L.JJ., agreed.

Counsel: *C. N. Davis* and *V. Aronson; Croom-Johnson*, K.C., and *W. Stable*.

Solicitors: *Alec Woolf & Co.; Wordsworth, Marr, Johnson & Shaw.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Forster and Another *v.* Williams Deacon's Bank Limited.

Lord Hanworth, M.R., Maugham, L.J., and Clauson, J.
6th February, 1935.

Trust — Will — Trustee — Discharge — Appointment of Bank—Managing Trustee and Custodian Trustee—Power to hold both Offices—Remuneration—Public Trustee Act, 1906 (6 Edw. 7, c. 55), ss. 2 and 4—Trustee Act, 1925 (15 Geo. 5. c. 19), ss. 36, 37 and 42.

Appeal from a decision of Bennett, J. (78 Sol. J. 754).

In 1879, a testator made a will containing no power for any trustee to charge remuneration. In 1932, his son was the sole trustee and wished to be discharged from the trusteeship. He executed a deed expressed to be in exercise of his powers under the Trustee Act, 1925, and the Public Trustee Act, 1906, appointing the bank sole managing trustee in his place, and separately custodian trustee exercising the functions under s. 4 of the Public Trustee Act, and entitled to the remuneration chargeable by the Public Trustee, if he were custodian trustee. Bennett, J., held that the bank could hold both offices and receive remuneration under s. 4 (3).

Lord Hanworth, M.R., allowing the appeal, said that section 36 of the Trustee Act, 1925, gave power to appoint a new trustee, and for the purposes of section 37 (1) (*c*) the bank were a trust corporation. They claimed to be entitled to charge as a custodian trustee. Section 2 of the Public Trustee Act, 1906, declared that the Public Trustee might act either as a custodian trustee or as an ordinary trustee, and under section 4, where he was appointed custodian trustee, there must also be managing trustees. Under section 4 (3) the same payment could be made to a trust corporation appointed custodian trustee as to the Public Trustee. If the bank in this case could claim to be custodian trustee, it could charge remuneration, but if it were trustee without any limitation it could not, since to obtain remuneration in such a case the trustee must have been appointed by the court under section 42 of the Trustee Act, 1925. It had been argued that the appointment operated to create the bank trustee with no qualification, despite the attempt to divide the duties into compartments. The appointment was either effective and operated to appoint the bank trustee *sans phrase* or ineffective as setting out to do what could not be done. In either case the bank could not charge.

Maugham, L.J. and Clauson, J., agreed.

Counsel: *Spens*, K.C., and *A. Mathews; Sir Herbert Cunliffe*, K.C., and *John Bennett*.

Solicitors: *C. S. Tomlinson; Routh, Stacey & Castle*, agents for *Orford & Sons*, of Manchester.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

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Parliamentary News.

Progress of Bills.

House of Lords.

British Shipping (Assistance) Bill.
Reported, without Amendment. [19th February.
Consolidated Fund (No. 1) Bill.
Royal Assent. [15th February.
Edinburgh Corporation (Tramways, &c.) Order Confirmation Bill.
Royal Assent. [15th February.
Educational Endowments (Scotland) Bill.
Royal Assent. [15th February.
Gelligaer Urban District Council Bill.
Read Second Time. [19th February.
Golders Green (Jewish) Burial Ground Bill.
Read Second Time. [14th February.
Halifax Extension Bill.
Read Second Time. [14th February.
Ministry of Health Provisional Order (Cumberland and Lancaster) Bill.
Read Second Time. [19th February.
Ministry of Health Provisional Order (Gloucester and Warwick) Bill.
Read Second Time. [19th February.
Ministry of Health Provisional Order (Holland and Kesteven) Bill.
Read Second Time. [19th February.
Ministry of Health Provisional Order (Holland and Lindsey) Bill.
Read Second Time. [19th February.
Ministry of Health Provisional Order (Leicester and Warwick) Bill.
Read Second Time. [19th February.
National Gallery (Overseas Loans) Bill.
Read Third Time. [19th February.
Regimental Charitable Funds Bill.
In Committee. [19th February.
Stoke-on-Trent Corporation Bill.
Read Second Time. [19th February.
Swansea and District Transport Bill.
Read Second Time. [14th February.
Unemployment Assistance (Temporary Provisions) Bill.
Royal Assent. [15th February.
Unemployment Insurance Bill.
Read Third Time. [19th February.

House of Commons.

Cattle Industry (Emergency Provisions) Bill.
Read First Time. [19th February.
Government of India Bill
In Committee. [20th February.
Harrogate Corporation Bill.
Read Second Time. [20th February.
Herring Industry Bill.
Reported, with Amendments. [19th February.
Metropolitan Water Board Bill.
Read Second Time. [18th February.
Ministry of Health Provisional Order (Huntingdonshire Joint Hospital District) Bill.
Read Second Time. [15th February.
Ministry of Health Provisional Order (South Chilterns Joint Small-pox Hospital District) Bill.
Read Second Time. [15th February.
Northern Ireland Land Purchase (Winding-up) Bill.
Read First Time. [14th February.
Post Office (Amendment) Bill.
Read Second Time. [15th February.
Post Office and Telegraph Bill.
Read First Time. [18th February.
Rhyl Urban District Council Bill.
Read Second Time. [14th February.
South Shields Corporation Bill.
Read Second Time. [14th February.
Superannuation Bill.
Read First Time. [18th February.

Questions to Ministers.

RENT RESTRICTIONS ACT.

Mr. GROVES asked the Minister of Health what protection is afforded by his Department to a tenant of a house which is actually controlled but against which a certificate of decontrol is issued by a local authority upon instructions of the county court.

Sir H. YOUNG: The certificate to which the hon. Member refers is merely a certificate of registration of a claim that a house is decontrolled. It is specifically provided that such a certificate shall not be received as evidence on the issue whether or not the house is in fact decontrolled. That issue is a legal one to be determined by the court. [14th February.

WORKMEN'S COMPENSATION.

Mr. TINKER asked the Home Secretary whether his attention has been drawn to the delay in getting cases of injured workmen who have been served with the statutory ten days' notice before the medical referee under the provisions of the Workmen's Compensation Act; and whether he will consider making it compulsory on the employer to continue paying compensation to the injured person until his case has been before the medical referee, as this would speed up the examination.

Sir J. GILMOUR: I do not appear to have received any complaints on this point. If the hon. Member will send me particulars of actual cases in which there seems to have been undue delay, I shall be glad to consider them. [19th February.

COUNTY COURT OFFICE, SHAFTESBURY.

Mr. ISAAC FOOT asked the Attorney-General whether, in the new arrangements for county court premises at Shaftesbury, it is intended to establish the new county court office on the first floor of licensed premises; and, if so, whether there is any precedent for such conditions.

THE SOLICITOR-GENERAL (Sir Donald Somervell): New county court offices are urgently required at Shaftesbury and the only suitable premises the Office of Works have been able to find are two rooms over off-licence premises. The entrance from the street is 8 feet wide and the stairs leading to the upstairs rooms have a separate door. The Office of Works are hiring the rooms on a short tenancy only until other suitable accommodation becomes available.

Mr. FOOT: In the further consideration of this matter, will the Solicitor-General have regard to the fact that under the existing law it is impossible to hold ordinary sessions or a coroner's inquest on licensed premises, and why should not that apply also to county court offices.

THE SOLICITOR-GENERAL: As I have said, these rooms have been hired on a short tenancy and are the only ones available at the moment. [19th February.

INDICTABLE OFFENCES ACT.

Sir A. WILSON asked the Home Secretary whether he is aware that the existing procedure under the Indictable Offences Act has not been modified since 1848, at which time illiteracy was common, and that it tends to add to the cost of and delay in criminal proceedings; and whether he will consider the possibility of introducing proposals to amend the Act in order to improve, simplify, and cheapen the administration of justice.

Sir J. GILMOUR: My hon. and gallant Friend is mistaken in thinking that the procedure has not been modified since 1848. The Indictable Offences Act has been considered and amended from time to time and I do not see my way at the present time to initiate any legislation on the subject. [20th February.

Societies.

The Medico-Legal Society.

An ordinary meeting of the Society will be held at 11, Chandos-street, Cavendish-square, W.1, on Thursday, the 28th February, at 8.30 p.m., when a Paper will be read by Major G. Burrard, on "The Identification of Firearms in Murder Cases by Microscopic Examination of Fired Bullets and Cartridge Cases," which will be followed by a discussion.

Members may introduce guests to the meeting on production of the member's private card.

United Law Society.

A meeting of the United Law Society was held on the 11th February, in Middle Temple Common Room. Mr. G. B. Burke proposed: "That the legal avoidance of taxation is immoral and to be deprecated." Mr. S. A. Redfern opposed. Messrs. J. H. Menzies, F. R. McQuown, O. T. Hill, R. L. S. de Marpenlin, R. E. Ball, J. H. Levy and A. Blundon spoke, and Mr. Burke replied. The motion was lost by four votes.

A meeting of the United Law Society was held on the 18th February, in Middle Temple Common Room. Mr. O. T. Hill proposed: "That *George Trollope & Sons* v. *Martyn Brothers* [1934] 2 K.B. 436, was wrongly decided." Mr. I. H. Levy opposed. Messrs. J. H. Menzies, H. S. Wood Smith and R. E. Ball spoke, and Mr. Hill replied. The motion was lost by two votes.

University of London Law Society.

The University of London Law Society held a legal debate on Tuesday, 12th February, at the School of Economics on the motion of Mr. Furtado: "This House is of opinion that the case of *Monk* v. *Warbey & Others* (1934), 78 SOL. J. 783; 50 T.L.R. 263, was wrongly decided." Mr. Gowan argued for the negative and Mr. M. O'C. Stranders, barrister-at-law, presided.

The University of London Law Society recently had a joint debate at the School of Economics with Gray's Inn Debating Society. A motion "That in a well-organised community the lawyer is superfluous" was moved by Mr. Vellat and Mr. A. Goodman, and the negative was taken by Mr. F. E. C. Wood and Mr. E. Walker. The following also spoke: Messrs. Kelly, Garner, Hales, Furtado, Capt. Parker, Messrs. Rogers, Knowles and Miss Greenwood. The motion was lost by eleven votes to thirty.

Mr. O'C. Stranders, barrister-at-law (President), acknowledged the thanks of Capt. Parker (President, Gray's Inn Debating Society), who on behalf of Gray's Inn thanked them for the happy evening they had spent. It was regarded as a popular annual feature for them both.

Gray's Inn Debating Society.

The second meeting of the year was held in the Bank of England Club, at 5 p.m., on Thursday, 7th February, when the annual Joint Debate with the Bank of England Debating Society took place, the President of the latter society (Mr. W. B. Hillkirk) being in the chair. The motion for debate was, "That humanitarianism is the curse of politics."

The chairman having welcomed the members of the visiting society, the motion was proposed by Mr. Hector Hughes, K.C., and opposed by Mr. A. L. Redgrove (Vice-President, B. of E.D.S.); Mr. J. W. Carr, M.C. (B. of E.D.S.) spoke third, and Mr. T. A. E. Spearing spoke fourth. On the motion being thrown open to the house, Mr. W. Hyett (B. of E.D.S.), Miss P. M. Van (B. of E.D.S.), Mr. D. Matus, Mr. N. Morris (B. of E.D.S.), Mr. J. W. J. Cremlyn (Ex-President) and Capt. F. J. Parker (President) spoke in favour of the motion, and Mr. R. F. Thomas (B. of E.D.S.), Mr. A. P. Miall (B. of E.D.S.) and Mr. E. R. Desborough (B. of E.D.S.) against it, after which the opposer and proposer successively replied. The motion was rejected by thirty votes to fourteen, the number of members of the two societies and guests present being seventy-five.

General Council of the Bar.

ELECTION RESULT.

The following twenty-four candidates have been elected Members of the Council:—

KING'S COUNSEL: Sir Herbert Cunliffe, A. T. Miller, Sir Gerald Hurst, M.P., A. F. Topham, J. D. Cassels, M.P., H. B. Vaisey, J. Willoughby Jardine, Noel B. Goldie, M.P., T. J. O'Connor, M.P., Walter T. Monckton, Maurice Healy.

OUTER BAR: W. Hanbury Aggs, J. W. M. Holmes, A. Andrewes Uthwatt, C. J. Parton, W. Blake Odgers, J. H. Boraston, C.B., William Latey, F. W. Gentle, T. M. O'Callaghan, E. Anthony Hawke.

UNDER TEN YEARS' STANDING AT THE BAR.—Richard Elwes, D. H. Robson, E. Garth Moore.

The Solicitors' Managing Clerks' Association.

Mr. B. R. Cecil, the retiring President, took the chair at the annual general meeting of the Association held on the 14th February. In his address he spoke of the educational activity of the Association during the past year, and pointed with pride to the fact that all its work was voluntary. Mr. Hammond had arranged a number of interesting lectures to be delivered by members of the Bar in the Inns of Court; these had been exceedingly well attended. Mr. J. A. Blackburn and Mr. Fogden had enjoyed record attendances at their classes for students and junior clerks held in the Lord Chief Justice's Court; Mr. Fogden's record of 141 entries was, however, eclipsed by that of Mr. MacNab Taylor, who had over 190 students entered for his lectures on conveyancing. Members' meetings had received much better support, and interesting papers had been delivered, but the President urged members to attend in yet larger numbers and keep themselves up to date in their law by taking part in the debates. He paid tribute to the work of Mr. Ling, the honorary secretary, and of Mr. Arnold and Mr. Ludbrook, the honorary librarians. Their work on the reorganisation of the library had proved very heavy, but any member could now, with the assistance of the indexes which they had prepared, easily find any text-book. The membership of the Association had been well maintained and the finances were in a healthy condition. Mr. Elphick had now been treasurer for twenty-five years and could almost be regarded as the father of the Association.

The late Lord Riddell, himself a solicitor to the day of his death, had made the Association a residuary legatee. The trustees were to divide the residuary estate into six equal parts, and the Association was entitled to one-half of a sixth part. This represented a substantial amount and would undoubtedly enable the Association to offer additional privileges and advantages to its members.

The summer outing had been spent at Wendover, and the smoking concert had, as usual, received the fullest support. At the festival dinner in December over 400 members and friends had been present to meet the principal guest, Lord Thankerton. The Bournemouth Branch continued to flourish under the able guidance of Mr. Read, and had held a number of interesting lectures. It was fortunate in having such eminent members of the Bar as Mr. Raymond Needham, K.C., residing in Bournemouth.

The President commended to the use of members the Association's register of clerkships, in which they were invited to insert particulars of any vacancy in their offices, and another register in which members who desired to make a change might insert particulars of their qualifications and requirements.

A meeting will be held on Friday, 1st March, in the Inner Temple Hall, by kind permission of the Benchers, when Mr. Thomas Bucknill will deliver a lecture on "Divorce." The chair will be taken at 7 o'clock precisely by The Right Hon. Sir F. Boyd Merriman. The meeting ends at 8 p.m.

The Auctioneers' and Estate Agents' Institute.

A sessional evening meeting of the members of this Institute will be held at 29, Lincoln's Inn Fields, W.C.2, on Thursday, 28th February, at 7 p.m., when Mr. L. A. Blackbourn, L.M.T.P.I. (Solicitor) will deliver a Paper entitled "Planning Building Estates (chiefly in Rural and Semi-Rural Areas) simply and speedily by Agreement."

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve that the Honour of Knighthood be conferred upon The Hon. Mr. Justice HILBERY, in virtue of his appointment as a Judge of the High Court of Justice, King's Bench Division.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. W. S. MORRISON, K.C., M.P., be appointed Recorder of Walsall, to succeed Mr. S. Lowry Porter, K.C., who has been appointed a High Court Judge.

The King has been pleased to approve the appointment of Mr. K. M. KEMP, barrister-at-law, as Advocate-General for the Presidency of Bombay, with effect from 27th February, in the vacancy caused by the retirement of Sir Jamshedji Kanga.

The First Lord of the Admiralty, with the concurrence of the Attorney-General, has appointed Mr. G. ST. C. PILCHER to the office of Junior Counsel to the Admiralty in the Admiralty Court in the vacancy created by the appointment of Paymaster Commander K. S. Carpmael, R.N. (retired), to be one of His Majesty's Counsel.

The Hon. Sir HERBERT DU PARCQ, a Judge of the High Court of Justice, King's Bench Division, M.A., B.C.L., formerly a Scholar of Exeter College, Oxford, has been elected to an Honorary Fellowship.

Mr. J. W. A. OLLARD, solicitor, of Wisbech, has been appointed a Deputy-Lieutenant of Cambridgeshire and Huntingdonshire. Mr. Ollard, who was admitted a solicitor in 1919, is a member of the firm of Messrs. Ollard & Ollard, of Wisbech.

Mr. JAMES BEATH, solicitor, of Thurso, has been appointed Town Clerk of Thurso in succession to Mr. D. Keith Murray, D.L., B.L., who has resigned.

Mr. E. R. FARR, Deputy Town Clerk of Poole, has been appointed Deputy Town Clerk of Barking. Mr. Farr was admitted a solicitor in 1927.

Mr. M. H. CHUBB, Town Clerk of Malmesbury, has been presented with the freedom of the borough on the occasion of his eightieth birthday. Mr. Chubb is stated to be the oldest Town Clerk in the kingdom. He was admitted a solicitor in 1876.

SCOTLAND YARD'S NEW LEGAL DEPARTMENT.

It has been decided, with the approval of the Secretary of State, to set up a Legal Department at New Scotland Yard. The new department will undertake prosectuions on behalf of the Metropolitan Police and will advise the Commissioner and the officers of the force on questions of law. The creation of this department necessitates an alteration in the present arrangements, whereby Messrs. Wontner & Sons undertake prosecutions on behalf of the police, but the Commissioner is pleased to announce that he has secured the services in the new department of Mr. W. L. Sanders, Mr. C. M. Melville, M.C., members of the firm, and a number of the staff. Mr. E. B. Knight, the senior partner of the firm, will carry on the private practice of Messrs. Wontner & Sons, 40, Bedford-row. The new department will start to take over the work of Messrs. Wontner & Sons at the beginning of April, 1935, and the taking over will be completed by the beginning of May, 1935. Mr. T. MacD. Baker, who has been acting as legal adviser to the Commissioner of Police at New Scotland Yard since May, 1934, will be in charge of the new department and solicitor to the Metropolitan Police.

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.

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Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Non-Witness.	GROUP I. MR. JUSTICE BENNETT. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Feb. 25	Jones	More	Andrews	*Ritchie
,, 26	Ritchie	Hicks Beach	More	*Andrews
,, 27	Blaker	Andrews	Ritchie	*More
,, 28	More	Jones	Andrews	Ritchie
Mar. 1	Hicks Beach	Ritchie	More	*Andrews
,, 2	Andrews	Blaker	Ritchie	More

DATE.	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part II.	GROUP II. MR. JUSTICE CLAUSON. Witness. Part II.	MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Feb. 25	More	*Jones	*Hicks Beach	Blaker
,, 26	*Ritchie	Hicks Beach	*Blaker	Jones
,, 27	Andrews	*Blaker	*Jones	Hicks Beach
,, 28	*More	Jones	*Hicks Beach	Blaker
Mar. 1	Ritchie	*Hicks Beach	Blaker	Jones
,, 2	Andrews	Blaker	Jones	Hicks Beach

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 14th March, 1935.

	Div. Months.	Middle Price 20 Feb. 1935.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	116	3 9 0	2 19 11
Consols 2½%	JAJO	90	2 15 7	—
War Loan 3½% 1952 or after	JD	107⅛	3 5 4	2 19 7
Funding 4% Loan 1960-90	MN	119	3 7 3	2 18 4
Funding 3% Loan 1959-69	AO	105½	2 16 10	2 13 11
Victory 4% Loan Av. life 29 years	MS	115½xd	3 9 3	3 3 6
Conversion 5% Loan 1944-64	MN	122½	4 1 8	2 1 0
Conversion 4½% Loan 1940-44	JJ	113	3 19 8	2 2 11
Conversion 3½% Loan 1961 or after	AO	109⅞	3 3 9	2 18 11
Conversion 3% Loan 1948-53	MS	105½	2 16 10	2 10 0
Conversion 2½% Loan 1944-49	AO	103¼	2 8 5	2 1 10
Local Loans 3% Stock 1912 or after	JAJO	97	3 1 10	—
Bank Stock	AO	370½	3 4 9	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	91	3 0 5	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96½	3 2 2	—
India 4½% 1950-55	MN	115½	3 17 11	3 3 8
India 3½% 1931 or after	JAJO	98½	3 11 1	—
India 3% 1948 or after	JAJO	88½	3 7 10	—
Sudan 4½% 1939-73 Av. life 27 years	FA	122	3 13 9	3 5 3
Sudan 4% 1974 Red. in part after 1950	MN	117	3 8 5	2 13 6
Tanganyika 4% Guaranteed 1951-71	FA	116	3 9 0	2 15 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	112½	4 0 0	2 10 7
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	111	3 12 1	3 4 10
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3 12 1	3 7 7
Canada 4% 1953-58	MS	111	3 12 1	3 4 4
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	102	2 18 10	2 15 4
†Nigeria 4% 1963	AO	116	3 9 0	3 3 0
*Queensland 3½% 1950-70	JJ	103	3 8 0	3 4 10
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 4
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	98	3 1 3	—
*Croydon 3% 1940-60	AO	101	2 19 5	2 15 3
Essex County 3½% 1952-72	JD	108	3 4 10	2 18 4
Leeds 3% 1927 or after	JJ	98	3 1 3	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	109	3 4 3	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	89	2 16 2	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96½	3 2 2	—
Manchester 3% 1941 or after	FA	98	3 1 3	—
*Metropolitan Consd. 2½% 1920-49	MJSD	101	2 9 6	—
Metropolitan Water Board 3% "A" 1963-2003	AO	101	2 19 5	2 18 11
* Do. do. 3% "B" 1934-2003	MS	99	3 0 7	3 0 8
Do. do. 3% "E" 1953-73	JJ	103	2 18 3	2 15 8
†Middlesex County Council 4% 1952-72	MN	116	3 9 0	2 17 0
† Do. do. 4½% 1950-70	MN	118	3 16 3	3 1 3
Nottingham 3% Irredeemable	MN	99	3 0 7	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 2
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	113½	3 10 6	—
Gt. Western Rly. 4½% Debenture	JJ	126½	3 11 2	—
Gt. Western Rly. 5% Debenture	JJ	138½	3 12 2	—
Gt. Western Rly. 5% Rent Charge	FA	133½	3 14 11	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	131½xd	3 16 1	—
Gt. Western Rly. 5% Preference	MA	117xd	4 5 6	—
Southern Rly. 4% Debenture	JJ	112½	3 11 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	112½	3 11 1	3 5 10
Southern Rly. 5% Guaranteed	MA	131½xd	3 16 1	—
Southern Rly. 5% Preference	MA	117½xd	4 5 1	—

*Not available to Trustees over par. † Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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